SINGLE BENCH

1
3

IN THE HIGH COURT OF JUDICATURE AT

BILASPUR (C.G.)

W.P. NO. 4316 /2005

PETITIONER : Narsingh, S/o. Chamaru Gada
Aged about 52 years
R/o. Sanpanthi, P.C.No.10,
Tahsil Saraipali, District
Mahasamund (C.G.)

P.R. No. 4452/05
Presented by Shri Abhijit
dated 1/9/05

VERSUS

RESPONDENTS :1. The State of Chhattisgarh
Through: Secretary
Department of Revenue
D.K.S. Bhawan, Mantralaya
Raipur (C.G.)

RE
CLERK U.H.C. BILASPUR 1.9.05

2. Board of Revenue,
Chhattisgarh Bilaspur
Through: Its Presiding Officer
Circuit Court, Raipur
District –Raipur (C.G.)

3. Sub-Divisional Officer
Tahsil Saraipali, District
Mahasamund (C.G.)

4. Naib Tahsildar
Saraipali,
District Mahasamund (C.G.)

5. Smt. Dhanmoti,
Wd/o. Jaikishan,
R/o. Sanpanthi, P.C. No.10,
Tahsil Saraipali, District
Mahasamund(C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 4316/05 **सन्** / **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14-9-2005 Mr. Raghavendra Pradhan, counsel for the petitioner. Mr. Yashwant Singh, Government Advocate for the State/respondents No.1, 3 and 4. The petitioner has questioned the legality, propriety and correctness of the order dated 18-5-2005 (Annexure P-1) passed by the Board of Revenue in Revenue Appeal No.305/A-46/2003-04, whereby the learned Board of Revenue, after setting aside the order passed by the first appellate Court i.e. Sub-Divisional Officer (Revenue), has remanded the case to the Sub-Divisional Officer (Revenue) for taking additional evidence and deciding the case. The main grievance of the petitioner herein is that as per the amended provision of Section 49(3) of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code'), the Board of Revenue is not authorised to remand the case as there is a specific bar under the proviso to sub-section (3) of Section 49 of the Code. Having heard the counsel for the petitioner and the counsel for the respondents No.1, 3 and 4, I am of the considered opinion that the order impugned is patently illegal and perverse, therefore, it is liable to be set aside, and as the order impugned is perverse and illegal, which is liable to be set aside, therefore, issuance of notice to the respondent No.5 is going to further delay the proceedings, as such the notice is not being issued to the	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No.4316/05

मामला क्रमांक ——2—— सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent No.5. However, the respondent No.5, if feels aggrieved by this order, she will be at liberty to move this Court for modification of this order and she will be heard thereafter.

The provisions of sub-section (3) of Section 49 of the Code are as under : -

Sec. 49 : **"Power of appellate authority.** – (1) xxxx xxxx xxxxx

(2) xxxx xxxx xxxx xxxx xxxx

(3) After hearing the parties, the Appellate Authority may confirm, vary or reverse the order appealed against; or may take such additional evidence as it may consider necessary for passing its order :

Provided that the Appellate Authority shall not remand the case for disposal by any Revenue Officer subordinate to it."

Para 6 of the impugned order shows that the learned Board of Revenue has recorded that the orders of the trial Court and first appellate Court are set aside same being not in accordance with law and the matter is remanded to the Sub-Divisional Officer (Revenue), Saraipali with a direction that the Sub-Divisional Officer (Revenue) shall take additional evidence and after considering the existing and additional evidence and other material available on record and hearing the parties shall decide

XI-HC-22

30

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P. No. 4316/05

मामला क्रमांक —3— सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the matter afresh on merits. This order of the Board of Revenue is contrary to the provisions of sub-section (3) of Section 49 of the Code, which has been extracted above and which provides the appellate authority either to confirm, vary or reverse the order appealed against, or to take such additional evidence as it may consider necessary for passing its order. The Board of Revenue has been authorised to take additional evidence and decide the matter. It has been further provided that the appellate authority shall not remand the case for disposal by any Revenue Officer subordinate to it. Therefore, the Board of Revenue was not authorised to remand the case for decision by the Sub-Divisional Officer (Revenue).

In the result, the order impugned is set aside and the Board of Revenue is directed to decide the appeal in accordance with the provisions of Section 49(3) of the Code. Accordingly, the petition stands allowed.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

G.Singh

(पीछे देखिये)